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But if "practical" treatises must exist, let us have such treatises as Mr. COBBEY'S. This is no scissors-and-paste work. It is the result of a careful collation of statutory provisions and judicial decisions from all the States in the Union and from England. It is true that the cases have not been examined critically, except with respect to points on which there is an open and notorious conflict; but the substance of the decision is in each case clearly and accurately stated. In short, the entire work gives evidence of the industry, care and patience with which the author has accomplished his task.

G. W. P.

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MILITARY GOVERNMENT AND MARTIAL LAW. By WILLIAM E. BIRKHIMER, LL.B., First Lieutenant and Adjutant Third United States Artillery. Washington, D.C.: James J. Chapman, 1892.

This is one of the most delightful works which we have received. Unlike many others which it has been our duty to review, it is not the result of the laborious compilation of material by one who wrote as he collected his data, but the natural overflow of a mind filled with and interested in his subject. The style is, therefore, natural and easy, and the illustrations, while full and accurate, do not obtrude themselves upon the reader, nor are they brought in to show the number of authorities which the author has consulted. Lieutenant BIRKHIMER, besides evincing a minute knowledge of military history of our own and foreign States, shows himself to be a good constitutional lawyer and a close student of political science; a combination which renders him peculiarly fitted to treat of the subject with which he deals. The first part of his work treats of military government, or the exercise of government in enemy's territory. The power to declare war, the right to establish martial government, the temporary allegiance of the inhabitants of the conquered territory, and the rights of the conqueror and governed are treated in logical order, and the reader passes easily and naturally from one chapter to another. The keynote of this part of the work is in the author's opinion that when the government of a country has been overcome and driven out the inhabitants owe temporary allegiance, at least, to the government established by the conqueror, and that the people should not be encouraged to rise *en masse* against the conqueror, and that individual guerilla warfare of any kind, rendering it necessary for the military commander of the conquering army to use harsh and repressive measures against the inhabitants, should be discountenanced. This view coincides with the one taken by Dr. BLUNTSCHLI, in his "Laws of War," and by most of the larger continental powers, and combated by Mr. HALL in his "International Law," and in fact by nearly all English writers, by the English government, and smaller continental States.

The second part of the work treats of martial law, or a military government of the people of the State which creates the government. After showing the distinction between military and martial law, and the theory of martial law under English jurisprudence and in the United States, as also the necessity justifying martial law, we come to the Federal authority

in the United States to institute martial law. At this point he differs with Judge HARE, who, in his learned work on "Constitutional Law," takes the position that the Executive alone has the power to declare martial law. Lieutenant BIRKHIMER would also give this power to Congress. We advise those of our readers who desire to come to a definite conclusion on this interesting and important question to read the arguments of both Judge HARE and Lieutenant BIRKHIMER. It is in this argument that our author's ability as a constitutional lawyer is put to a severe test.

If we were asked to point out the distinguishing feature of the book, we should say that it was the care and exhaustive knowledge of the decisions of the Supreme Court of the United States. It is seldom we have the pleasure of recommending to our readers who may be interested in a particular subject a work better fitted to supply them with accurate and complete knowledge in an entertaining form. W. D. L.

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## COMMENTS ON RECENT DECISIONS.

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### ANOTHER VIEW OF REEVES *v.* PHILADELPHIA TRACTION COMPANY.

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THE annotator's view of the decision in *Reeves v. Philadelphia Traction Co.*, 152 Pa., 153, *supra*, 127, as "so consistent with the trend of judicial precedents, not only in Pennsylvania but elsewhere," can be shared only by those who hold with the Court that the Act of May 8, 1876, P. L., 147, "relating to the use of motive power upon passenger railways," is a regulation of municipal affairs affecting only incidentally the charters of certain railway corporations. If the Act be regarded as designed primarily to extend the franchises of passenger railway companies, and merely involving incidentally a regulation of municipal affairs, then the limitation of its operation to cities of the first class would be local legislation, and, therefore, unconstitutional.

That the Act concerns municipal affairs, as well as the franchises of corporations, is indisputable. The question is, to which does it relate primarily? If to the former, a subject which can be regulated by a law applying to a class of cities, then the act is general; otherwise it is local.

The grant to the passenger railways of the right to use other than animal power, and the grant of power to the councils to give or withhold consent to the exercise of this right by the railways, are two wholly different things, and the one need not have been dependent on the other, as the provision in Article XVII, Section 9, of the Constitution of Pennsylvania, requiring the consent of the local authorities, applies only to the *construction* of passenger railways. An Act simply permitting all